rightly exercised its discretion in precluding the defendant from defending, might have gone on to set aside the judgment upon the principles laid down by the House of Lords in *Evans v. Bartlam*[2]. As, however, no merits were either proved or suggested, this point never arose, so that the decision in that case amounts to this — that the power of the Sessions Court to preclude the defendant from defending is discretionary and that the discretion had been properly exercised.

In so far therefore as the judgment in the present case is alleged to have been obtained irregularly I followed the decision in *J. M. Gomes*[1] *case* and held that the learned Magistrate was entirely correct in giving judgment against the defendant in the first instance.

This, however, left entirely untouched the main question before me in this appeal as to whether that judgment should be set aside. The principles which govern the question of setting aside default judgments are laid down by the House of Lords in the case of *Evans v. Bartlam*[2], the relevant part of the headnote of which, as reported in the Times Law Reports, is as follows:—

"Held, ... that, unless and until the Court has pronounced a judgment on the merits or by consent, it has the power to revoke the expression of its coercive power where that has only been obtained by a failure to follow any of the rules of procedure.

The Court of Appeal is not limited to interfering with a Judge's exercise of discretion only if it is of opinion that he acted on some wrong principle of law, but has both the power and the duty to interfere if it is seen that on other grounds the Judge's decision will result in injustice being done."

It is true that this decision rests to some extent upon the relevant English rules of Court, but the principles I think apply to the Subordinate Courts by virtue of the provisions of Order 36 rule 19, which expressly preserves the inherent power of the Court to make such orders as may be necessary to prevent an injustice. If a defendant, who has in fact a complete defence to the claim, has by his own foolishness or carelessness allowed judgment to go by default it appears to me that there will be an injustice, if he is not allowed to put his defence before the Court; and the defendant's fault, if any, can (to use the words of Lord Wright in the same case) "be sufficiently punished by the terms as to costs or otherwise which the Court in its discretion is empowered by the rule to impose". The relevant rule as to terms in the Subordinate Courts Rules is Order 12 rule 5.

In the circumstances I came to the conclusion that the proper course was to set aside the default judgment and to order that the case be re-tried by a different Magistrate. I would have imposed as terms upon which the judgment was to be set aside that the articles in question in the Suit be brought into Court; but as I was informed that these articles were already in the hands of the bailiff this was unnecessary.

Re-trial ordered.

Solicitors for the appellant: *H. E. P. Powell & Co.*

SMITH CONSTRUCTION CO. LTD. v. PHIT KIRIVATNA (f)

[O. C. J. (Spenser Wilkinson J.) December 10, 1954]

[Penang — Civil Suit No. 55 of 1953]

Contract — Building contract — Where the certificate of the architect can be dispensed with — Uncompleted building — Claim on quantum meruit.

This was a claim on a building contract. The plaintiffs were employed as contractors to build a house for the defendant. As a result of information given by the defendant to the plaintiffs' representative the house was built so as partly to encroach an adjoining land. When this was found the representative of the architect requested the plaintiffs to proceed slowly with the work pending a settlement with the owner of the encroached land. The plaintiffs thereupon asked that they be paid for the work already done and asked for a certificate. The certificate was not given and the Solicitors for the plaintiffs thereupon wrote stating that they had still not received the certificate that this was an obvious breach of the contract and therefore the plaintiffs had stopped work and were issuing a writ. In the meantime the architect's representative wrote to the contractors stating that the work was not proceeding with due diligence and giving twenty four hours notice in which to proceed with the work in an efficient and expeditious manner failing which he would request the employer to take action under Clause 18 of the agreement.

Held: (1) in the circumstances of this case the defendant is precluded from raising that point that the architect's certificate is a condition precedent to payment; (2) there should in this case be implied a contract by the defendant to pay for the work done and therefore the plaintiffs are entitled to recover the full amount of the work and labour due and materials supplied and together with additional days as they have suffered by reason of the slowing down and stoppage of the work.

Cases referred to:—

(1) *Pawley v. Turnbull* (1861), 66 E.R. 327; 3 Giff. 70.

(2) *Hickman v. Roberts* (1913) A.C. 229.

(3) *Gutter v. Powell* 6 T.R. 320.

(4) *Munro v. Butt* 8 E. & B. 738.

(5) *Lysaght v. Pearson* Not reported, except in *Times* Newspaper of March 3, 1879.

(6) *Sumpter v. Hedges* (1898) 1 Q.B. 673.

(7) *Roberts v. Bury Commissioners* L.R. 5 C.P. 310.

CLAIM on contract.

R. D. Hume for the plaintiffs.

Ong Huck Lim (*Khoo Eng Cheang* with him) for the defendant.

Cur. Adv. Vult.

Spenser Wilkinson J. : — The plaintiff Company, of whom the Managing Director is Mr. Smith, was contractor, the defendant was the building owner and Mr. B. M. Iversen of Ipoh was the architect in respect of a contract for the erection of a house on Lot 64 (iv) Mukim 17 North East District, Penang.

The plaintiffs' tender for the work at the price of $56,000 was accepted some time in April, 1952, and on or about the 1st May Mr. Smith attended at the site where he met Mr. Moora, the representative of the architect and the defendant. At that time a large area of the land had already been levelled off by the defendant and there is no doubt that part of this levelled area in fact constituted an encroachment upon the neighbouring lot of land. This, however, was not known to any of the parties at the time (except, perhaps, to the defendant) and on this occasion Mr. Moora proceeded to mark out the position on the site which the building was to occupy. Mr. Moora having done this, the defendant intervened and pointed out that the building as marked out appeared to be unnecessarily close to the kitchen quarters of a hotel next door and asked the architect to alter the position of the building away from this hotel. She pointed out certain boundary stones and as a result Mr. Moora received the impression that there was more room on the site than he had supposed and upon the defendant's request he altered the position of the building some distance to the eastward. Mr. Smith states that the markers were removed a distance of about 10 feet, but I have no accurate information as to the exact distance that the position of the house was altered.

Here I would mention that the defendant denied in evidence having requested this shift of site and indeed denied that she had anything to do with it and alleged that she could not understand what was said as she does not understand English. I am entirely satisfied on the evidence that she did request Mr. Moora to move the house and that she in fact took a very active interest in the building in many ways. In my opinion the defendant's evidence cannot be relied upon.

The building having thus been marked out the contractor proceeded to set out the building in accordance with the markers laid down by the architect and this work was subsequently inspected by the architect and approved.

Work then proceeded on the building in the normal course until the 28th August, 1952 when the Building Inspector of the Rural Board made an entry in the diary on the site to the effect that there appeared to be an encroachment upon the neighbouring site. Round about the same time on a date which is disputed and which I find as a fact to have been the 30th August, 1952, the possibility of this encroachment became known to Mr. Smith. Mr. Smith thereupon got into touch with the Building Inspector and met him on the site on the 4th September, 1952. They were then unable to check accurately as to the encroachment because the site plan did not show the numbers of the survey stones. Mr. Smith thereupon obtained from the Land Office a survey tracing of the building site and the neighbouring sites and on the 6th September, 1952 according to Mr. Smith (though according to Mr. Moora it was on the 4th September, 1952) he went with Mr. Moora to the site and it was definitely found that there was an encroachment to the eastward to the extent of approximately 18 feet. Whether or not the whole of the encroachment resulted from the alteration made in the position of the house made at the request of the defendant is not clear. It is clear, however, that this alteration either caused the encroachment or made it substantially worse than it would have been.

Mr. Moora then appears to have discussed the matter with the Building Inspector who said he could allow the building to continue for ten days on the assurance that the defendant would take the necessary steps to arrange matters with the owner of the neighbouring lot. Mr. Moora accordingly requested the contractor to proceed slowly with the work for the time being pending a settlement with the owner of the neighbouring lot.

Somewhere about the 8th October, 1952 according to the evidence of Mr. Iversen the owner of the neighbouring lot wrote and stated that in no circumstances would this land be sold. As a result of this the contractor was told verbally to stop all work on the building and on the 10th October, 1952 this was confirmed in writing.

Already at the time when the contractor was asked to proceed slowly with the work Mr. Smith requested Mr. Moora that in view of the slowing down of the work he be paid up to date for the work done so far and he asked for a certificate. He was told to submit his request in writing to the architect's Ipoh Office. The contractor does not appear to have made any written request for payment until the 7th October, 1952, when he wrote to Mr. Iversen requesting a progress payment. This request was repeated on the

18th October, 1952 and again by the plaintiffs' Solicitors on the 24th October, 1952. On the 4th November, 1952 the plaintiffs' Solicitors again wrote stating that they were not prepared to wait indefinitely, and on the 19th November, 1952 the plaintiffs' Solicitors wrote again to the same effect. This last letter appears to have crossed with a letter from Mr. Winthrop, who had then become the architect's representative in Penang, requesting the contractor to continue the construction of the house immediately. In reply to this the plaintiffs' Solicitors wrote on the 20th November, 1952 that before resuming work the contractor insisted on receiving the architect's certificate for the work done to date and materials supplied and payment of the amount shown due. On the 27th November, 1952 the plaintiffs' Solicitors wrote again that unless they received a certificate by the 2nd December, 1952 and a payment in due course thereafter they would treat the contract as being broken. On the 28th November, 1952 the defendant's Solicitors wrote a letter, of which the last paragraph is as follows :—

"Mr. Winthrop will communicate today with his Head Office in Ipoh and they will issue your client with a certificate to the value of the work done and payment for which has not yet been made."

On the 6th December, 1952 the plaintiffs' Solicitors wrote to the defendant's Solicitors stating that they had still not received the certificate; that this was an obvious breach of the contract and the contractor had, therefore, stopped work on the building and was issuing a writ.

Meantime on the 6th December, 1952 Mr. Winthrop wrote to the contractor stating that the work was not proceeding with due diligence and giving 24 hours' notice in which to proceed with the work in an efficient and expeditious manner and stating that upon failure to comply he would request the employer to take action under Clause 18 of the Agreement. On the 9th December, 1952 the defendant wrote to the plaintiffs giving notice in purported pursuance of Clause 18 of the Conditions of the Agreement determining the contract.

Although I do not think it affects the issues in this Suit I would remark that Clause 18 of the Schedule of Conditions of the Contract does not appear to me to be the appropriate clause to have used in the circumstances. I doubt if failure to proceed with due diligence is a good ground for determining this contract at all. There is a special clause (Clause 15) which deals with the failure of the contractor to proceed with due diligence and this clause provides penalties therefor. I am inclined to think, therefore, that the particular clause and not the general one is applicable, so that even if the contractor was not proceeding with due diligence (and upon this point I am far from being satisfied that he did not proceed with due diligence) the defendant had no right to determine the contract as she purported to do.

Certain other facts must be referred to. Mr. Iversen in his evidence stated that according to Mr. Winthrop and Mr. Moora, Mr. Smith knew of the encroachment before anyone else. According to Mr. Moora's evidence at a meeting at the E. & O. Hotel at 8 p.m. on the 7th October, 1952 Mr. Smith informed him (Mr. Moora) and Mr. Winthrop that he had known of the mistake before the 4th September, 1952 — one month before — but did not inform them and that he also understood from the Building Inspector that he had told him two or three weeks earlier. Mr. Winthrop said nothing in his evidence about this; but the point is raised in a letter dated the 7th November, 1952 from the architect's Solicitors to the plaintiffs' Solicitors. Whether or not Mr. Moora misunderstood Mr. Smith on this point, I am satisfied that Mr. Smith did not know about the encroachment before the 30th August, 1952. The importance of this matter is that all the three architects concerned appear to have formed the impression that Mr. Smith had known about the encroachment and had kept silent about it. They jumped to the conclusion that Mr. Smith had deliberately attempted to make money out of this mistake and were thereby biassed against Mr. Smith throughout the rest of the material time. Indeed, I think that in the case of Mr. Winthrop, who came into the matter at a fairly late stage and who had to admit that although he was in charge of the work he had not even a copy of the contract, not only his whole attitude but also his evidence was to some extent coloured by this bias.

Another fact which must be mentioned is that although at one stage the owner of the adjoining lot is alleged to have stated that in no circumstances would he sell the neighbouring lot it was eventually purchased, and Mr. Iversen himself paid half the purchase money. One reason was that the defendant had insufficient money, but no doubt another reason was that Mr. Iversen realised, as he frankly admitted in Court, that the encroachment was at least to some extent due to the negligence of the architect and that he might be liable to the defendant in respect thereof. Whether or not this payment of half of the purchase price for the adjoining lot was in part settlement of any claim that the defendant might have against the architect, or what indeed the rights as between the architect and the defendant in regard to the encroachment may be, does not concern the present dispute and I express no opinion

thereon. Nevertheless, it must be borne in mind that from the time of the purchase of this adjoining lot the architect necessarily ceased to be an independent and impartial person as between the building owner and the contractor and had in fact become part owner of the property upon which the house was being erected. Although the extent of his interest was small as regards area he was financially interested to the extent of $7,500, which is by no means negligible.

The plaintiffs' claim in this case, although it is pleaded as damages for breach of a contract, is I think to a large extent really a claim upon a *quantum meruit* and a good deal of the argument addressed to me was based upon this supposition. The defendant contends that as this was an entire contract the plaintiffs cannot sue without first completing the work, and she also contends that a certificate from the architect is a condition precedent to payment and that, as no certificate has been issued in respect of the work now claimed for, the action cannot lie.

I will deal first with the question of the certificate. Two progress certificates had been issued — one for a payment of $12,000 on the 14th July, 1952 and the second for a payment of $10,400, which appears to be undated but was forwarded on the 8th September, 1952. The value of the work and labour done up to the date of the stoppage was estimated by Mr. Boutcher — an independent architect — at $31,005.19 and Mr. Iversen himself agreed that the value of the work and materials at the date of the stoppage was in round figures about $32,000. It was also admitted, however, that when work is proceeding slowly the costs are higher, because the wages bill remains approximately the same while less work is done and also that a stoppage of work results in increased costs to the contractor. The architect refused to issue a certificate because according to him a certificate would not normally be issued in respect of works of this size for less than $10,000 and according to his figures at the date of the stoppage only about $2,400 was due to the contractor. No doubt if the work had neither been slowed down nor stopped this attitude might have been right, though in view of the wording of Clause 12 of the contract which says that the architect shall issue his certificates in accordance with this clause I doubt if the architect had the right to fix an arbitrary figure as the minimum for which he would issue a certificate. In any event this attitude entirely leaves out of account two important factors in this case, one of which I have already mentioned — first that the contractor as a result of the slowing down and of the stoppage was necessarily adversely affected in regard to his finances; and secondly that it is common building practice when work is stopped for the contractor to be paid up to date. Evidence as to this practice was given not only by Mr. Smith himself but also by Mr. Boutcher, a very experienced architect, whose evidence was taken before the hearing because he was leaving the country on retirement. In his evidence he said :—

> "It would be quite in order for the contractor before starting work (i.e. after the stoppage) to ask for payment up to date and to ask for full payment before he proceeded."

I do not think it is necessary for me to decide whether this practice is sufficiently well-known and universal to be imported into the contract. I did not understand the plaintiffs as asserting this. The evidence of it, however, is relevant if it is put forward, as I understand it was put forward, to assist in proving that the architect did not act fairly towards the contractor.

In considering whether or not the architect acted fairly and impartially the following facts must, I think, be taken into account: that the defendant had insufficient money to pay the additional price for the extra land that had to be bought and would, therefore, necessarily have had difficulty in making further payments to the contractor; that the architect paid half the price for the additional land and thereby became to this extent a joint building owner; that repeated requests from the contractor for payment were ignored for weeks; that the contractor had to disband part of his labour force for over a month; that at the time when the owner of the neighbouring lot had stated that in no circumstances would he sell there was no prospect of the actual contract ever being completed; that in finally refusing to issue a further certificate the architect entirely ignored the fact that there had been a stoppage of work; and that it is a common practice to pay a contractor up to date in case of a stoppage of work. These circumstances appear to me to amount to sufficient evidence to support the plea contained in paragraph 18A of the Amended Statement of Claim that the architect unreasonably delayed giving a certificate; that his action was uncalled for and unfair; and that the defendant took advantage of the architect's conduct to delay payment. Although there is no direct evidence of actual collusion between the owner and the architect I find it impossible to escape the conclusion that the architect was at least to some extent influenced in refusing a further certificate by the financial difficulties in which he knew the owner to be placed.

I think, therefore, that the plaintiffs have succeeded in bringing their case within the principles laid down in *Pawley v. Turnbull*[1] and *Hickman v. Roberts*[2]. The result of the judgments of the Court of Appeal

and the House of Lords in the latter case is summarised in *Creswell's Law relating to Building and Engineering Contracts,* 5th Edition, page 165 as follows:—

"This case clearly enunciates that unfair conduct, dishonesty or any wrongful conduct as would disqualify an architect may disqualify a certifier, set aside his certificate or dispense with the necessity for it, and that it is not necessary to prove in addition collusion or fraud on the part of the certifier."

With this summary I agree and I am, therefore, of the opinion that in the present case the defendant is precluded from raising the point that the architect's certificate is a condition precedent to payment.

With regard to the claim on a *quantum meruit,* the general rule is that if a contract is an entire one the plaintiff cannot sue until the work has been completed. (*Cutter v. Powell*[3]). One of the exceptions to this general rule is where, the special contract being unperformed, a new contract has been implied from the conduct of the parties to pay remuneration commensurate with the benefit derived from partial performance. In the case of a building the mere fact that the owner takes over possession and therefore to that extent the benefit of the contractor's work is not sufficient by itself to raise this implication (*Munro v. Rutt*[4]). There is, however, in the present case a great deal more than this. None of the cases cited to me is quite the same as the one now before me, but there is one which is very similar. This is the unreported case of *Lysaght v. Pearson*[5], which is referred to in *Sumpter v. Hedges*[6]. Referring to that case A. L. Smith L.J. says:—

"There the plaintiff had contracted to erect on the defendant's land two corrugated iron roofs. When he had completed one of them, he does not seem to have said that he abandoned the contract, but merely that he would not go on unless the defendant paid him for what he had already done. The defendant thereupon proceeded to erect for himself the second roof. The Court of Appeal held that there was in that case something from which a new contract might be inferred to pay for the work done by the plaintiff."

I am of opinion that from all the circumstances there must in this case be implied a contract by the defendant to pay for the work done — indeed I think it comes very near to being an express contract to this effect when the letter of the 28th November, 1952, part of which is quoted above, is read in the light of the various letters from the contractor to which it is a reply.

Finally, Mr. Hume referred to a very old principle which is set out in *Emden on Building Contracts,* 4th Edition, page 113 as follows:—

"It is a rule of law, which was established and well understood 200 years ago, and is laid down in Com. Dig., that 'the performance of a condition shall be excused by the obstruction of the obligee; as if a condition be to build a house, and he, or another by his order, hinders his coming upon the land, or says that it shall not be built, or interrupts the performance.' If, after part performance of the work, the completion be refused or prevented by the employer, the builder may insist upon his rights under the contract, or claim damages without completion, and he will be entitled to recover what he has lost by the act of the defendant."

There is in my opinion no doubt whatever that the whole trouble in this case arose from the fault of the defendant or of her agent, the architect in putting the house in the wrong place. When the work was stopped the contractor would, I think, have been entitled to treat the contract as at an end and sue for damages there and then. He took, however, what was to my mind a perfectly reasonable course and said in effect — I will in spite of your default in preventing the work go on with this building upon the terms of the original contract provided you first pay me up to date. The defendant and her architect keep silent on this proposal for over a month and then say they will issue a certificate. This promised certificate not being forthcoming the contractor finally on the 6th December, 1952 says that as no certificate has been given he has stopped work. It is only after this that the architects say that the contractor is not entitled to a certificate because the value of the work (computed without reference to the additional expense incurred by the stoppage) does not in their opinion exceed $32,000. The reference to faulty work in the letters of the 28th November, 1952 and 9th December, 1952 (pages 74 and 80 of the agreed documents) are really irrelevant. The contractor never disputed that a small portion of the work was faulty nor did he ever attempt to evade his liability to put it right, which he did. On the other hand neither the Architects nor the defendant ever admitted, until the trial, that the stoppage was due to their default and never made any attempt to reply to the contractor's offer that he would proceed with the work on condition that he was paid up to date. The suggestion put forward in argument before me that the extension of time clause entitled the architect to stop the work, if he thought fit, is in my opinion untenable. The fact that where there is delay the architect must give an extension of time does not support the proposition that the owner or architect may themselves delay or stop the work. (See *Roberts v. Bury Commissioners*[7], where a somewhat similar clause was considered).

For all these reasons I have come to the conclusion that the plaintiffs are entitled to recover the full amount of the work and labour done and materials supplied, together with such additional damages as they have suffered by reason of the slowing down and stoppage of the work.

The counter-claim was withdrawn, except as to the materials removed from the site by the contractor. I

do not think there is much substance in this part of the counter-claim for two reasons. In the first place the plaintiffs have given credit in their Claim for these materials, and secondly, as was pointed out by Mr. Hume, if these materials had been left on the site and used in the building the owner would have had to pay for them.

It is pleaded in paragraph 19 of the defence that the plaintiffs were "in default" in removing the materials belonging to the defendant from the building site. It is clear, however, that these materials were removed from the site during the stoppage of work because it was unsafe to leave them there owing to the danger of pilferage or deterioration and they were in my opinion quite properly removed by the plaintiffs to be placed in safe custody.

There will, therefore, be judgment for the plaintiffs with costs and the counter-claim will be dismissed with costs.

Claim allowed.

Solicitors: *Hogan, Adams & Allan; Pillai & Eng Cheang.*

WONG KOK KEONG v. REGINA

[A. Cr. J. (Spenser Wilkinson J.) December 17, 1954]

[Penang — Criminal Appeal No. 51 of 1954]

Criminal Procedure Code (Cap. 21), ss. 427(1) & 448 — Certificate of Chemist not served 10 clear days before commencement of trial — Improper admission — Failure of justice — Evidence Ordinance, 1950, s. 167 read together with s. 448 of the Criminal Procedure Code — Adjournment of case could not cure defect.

In this case the appellant was seen wearing an old wrist watch with what was described as "a new gold strap" and when asked by a Senior Revenue Officer if he had further dutiable goods he produced what was described as a medal or gold sovereign which he had in his pocket. Neither of these articles had been declared when he went through the Customs Barrier. By the Customs Duties Order, 1954, gold had been made dutiable on September 22, 1954, just over a fortnight earlier. The wrist strap and the medal were sent by Customs authorities to the Government Chemist, who gave his certificate to the effect that these articles were gold, a copy of which was served upon the appellant on October 18, 1954. The trial having commenced on October 28, 1954, this certificate had not been served ten clear days before the commencement of the trial. The point that arose in this appeal was whether in the circumstances this certificate was admissible in evidence.

Held: (1) the effect of s. 427(1) of the Criminal Procedure Code is to make certain documents evidence of the truth of their contents, which would otherwise not be evidence at all, and therefore, the provisions of s. 427(1) are provisions relating to evidence rather than to procedure; (2) improper admission of evidence would occasion a failure of justice if it resulted in a decision different from that which would have been given had the evidence not been admitted; (3) the improper admission of evidence will have no effect unless it has occasioned a failure of justice and in order to discover whether there has been a failure of justice one must be guided by s. 167 of the Evidence Ordinance, 1950; (4) the test as to whether or not a judgment of the Court below should be reversed or altered on account of wrongful admission of a certificate is whether or not without that evidence there was sufficient evidence to justify the conviction; (5) if a certificate which ought not to have been admitted is admitted and there is no other evidence to prove the facts stated in the certificate then, if the accused is convicted, there has been a miscarriage of justice; (6) there was no evidence before the Court to prove that the articles in question were in fact made of gold so as to bring them within the Customs Duties Order, 1954, which makes gold a dutiable article.

Obiter dictum: once the trial had commenced no adjournment could alter the fact that the certificate had not been served ten clear days before commencement. An adjournment could only have been of value if it had been granted to enable the evidence of the Chemist himself to be given instead of using his certificate.

[Editorial Note: Evidence Ordinance, 1950, s. 167 is similar to s. 168 Evidence Ordinance (Cap. 13) of Singapore.]

Cases referred to:—

(1) *Jennings v. Kelly* (1940) A.C. 206.
(2) *Semtex v. Gladstone* (1952) 2 All E.R. 206 at p. 212.
(3) *Public Prosecutor v. Tay Tuan* (1953) M.L.J. 20.
(4) *Chong Yik v. Public Prosecutor* (1953) M.L.J. 72.
(5) *Goh Tong v. Public Prosecutor* (1953) M.L.J. 167.
(6) *Chong Peng v. Public Prosecutor* (1954) M.L.J. 39.
(7) *Ng Yee v. Public Prosecutor* (1953) M.L.J. 254.
(8) *Goh Tong v. Public Prosecutor* (1953) M.L.J. 251.
(9) *Rex v. Cohen & Bateman* 2 Cr. App. R. 197.
(10) *Rex v. Haddy* (1944) 1 K.B. 442.
(11) *Stirland v. Director of Public Prosecutions* (1944) A.C. 315.

MAGISTRATE'S CRIMINAL APPEAL.

I. K. Meek for the appellant.

D. C. Jackson (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Spenser Wilkinson J.: — The appellant having crossed the ferry to Butterworth in a car driven by P.W.4 left the car at Mitchell Pier, went through the Customs Barrier on foot and rejoined the car outside a coffee shop at the corner of Pantai Road. He was observed getting into the car by a Revenue Officer, P.W.5 as a result of which a Senior Revenue